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Docket No. XANT-1-17198 (81336-74)

## DECLARATION AND POWER OF ATTORNEY

As a below-named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below beneath my name,

I believe that I am the original, first and sole inventor [if only one name is listed below] or an original, first and joint inventor [if plural names are listed below] of the subject matter which is claimed and for which a patent is sought on the invention entitled:

### ENERGY CONVERSION APPARATUS

the specification of which [check one]

☐ is attached hereto

☒ was filed on March 20, 2001 as Application Serial No. 09/812,973

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations §1.56(a).

"(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by Section 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) prior art cited in search reports of a foreign patent office in the application,
- (2) the closest information over which individuals associated with the prosecution of a patent application believe any person would define, to make sure that any material information is disclosed to the Office.

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(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
- (2) It refutes, or is inconsistent with, a position the applicant takes in:
  - (i) Opposing an argument of unpatentability relied on by the Office, or
  - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability."

I hereby claim foreign priority benefits under Title 35, United States Code §119 and/or §365 of any foreign application[s] for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate filed by me or my assignee disclosing the subject matter claimed in this application and having a filing date (1) before that of the application on which priority is claimed, or (2) if no priority claimed, before the filing of this application:

**PRIOR FOREIGN APPLICATION[S]**

**Priority Claimed**

**NO**

[Number]

[Country]

[Day/Month/Year filed]

I hereby claim the benefit under Title 35, United States Code, §119 and/or §120 of any United States application[s] listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code §112, I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations §1.56(a) which became available between the filing date of the prior application and the national or PCT international filing date of this application:

[Application Serial No.]

[Filing Date]

[Status: patented, pending, abandoned]

**POWER OF ATTORNEY:** As a named inventor, I hereby appoint as my attorneys and/or agents, with full powers of substitution and revocation, to prosecute this application and transact all business in the Patent and Trademark Office connected therewith:

Bruce E. O'Connor, Reg. No. 24,849; Lee E. Johnson, Reg. No. 22,946; Gary S. Kindness, Reg. No. 22,178; James W. Anable, Reg. No. 26,827; James R. Uhler, Reg. No. 25,096; Jerald E. Nagae, Reg. No. 29,418; Dennis K. Shelton, Reg. No. 26,997; Jeffrey M. Sakoi, Reg. No. 32,059; Ward Brown, Reg. No. 28,400; Robert J. Carlson, Reg. No. 35,472; Marcia S. Kelbon, Reg. No. 34,358; Rodney C. Tullett, Reg. No. 34,034; Daiva K. Tautvydas, Reg. No. 36,077; Mary L. Culic, Reg. No. 40,574; Julie C. VanDerZanden, Reg. No. 38,105; George E. Renzoni, Ph.D., Reg. No. 37,919; and Philip P. Mann, Reg. No. 30,960.

SEND CORRESPONDENCE TO: James W. Anable

Customer No. 26389

CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>PLLC</sup>  
1420 Fifth Avenue, Suite 2800  
Seattle, WA 98101

DIRECT TELEPHONE CALLS TO: James W. Anable  
206-695-1704

The undersigned hereby further appoints the following agents and authorizes the U.S. attorney(s) or agent(s) named above to accept and follow instructions from the following agents: J. Christopher Robinson, Reg. No. 35,772; John W. Knox, Reg. No. 35,776; Brian G. Kingwell, Reg. No. 39,482; Neil S. Clark, Reg. No. 37,524; and Stephen J. Ferance, Reg. No. P-48,090 of the firm Smart & Biggar as to any action to be taken in the Patent and Trademark Office regarding this application.

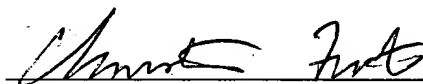
I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that wilful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such wilful false statements may jeopardize the validity of the application or any patent issued thereon.

Inventor No. 1

Full Name:

Christopher Freitas

Signature:



date: 5-24-01

Residence address:

1433 South 12<sup>th</sup> Street, Mount Vernon, Washington 98274,  
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Citizenship:

United States

Post Office address:

As above

Inventor No. 2

Full Name:

Robert Dean Gudgel

Signature:



date: 5-30-01

Residence address:

1419 Rucker Avenue, Everett, Washington 98201, United States

Citizenship:

United States

Post Office address:

As above

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Inventor No. 3

Full Name:

Amar Kant Nanda

Signature:

Amar Kant Nanda

date: July 18, 2001

Residence address:

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Citizenship:

Canadian

Post Office address:

As above

Inventor No. 4

Full Name:

Robin Wayne Gudgel

Signature:

date:

Residence address:

14000 Burn Road, Arlington, Washington 98223, United States

Citizenship:

United States

Post Office address:

As above

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: C. Freitas et al. Attorney Docket No.: XANI117198  
Application No.: 09/812,073 Group Art Unit: 2838  
Filed: March 20, 2001 Examiner: ----  
Title: ENERGY CONVERSION APPARATUS

DECLARATION OF DARLENE E. MCDERMOTT IN SUPPORT OF PETITION UNDER 37  
C.F.R. § 1.47(A) AND M.P.E.P. 409.3

I, Darlene E. McDermott declare as follows:

1. I am the Executive Administrative Assistant for the Distributed Residential and Commercial Markets of Xantrex Technology, Inc., the company which seeks assignment of Application No. 09/812,073 (hereinafter "the Application"). I have personal knowledge of the facts set forth in this declaration, and I am making this declaration in support of Applicant's Petition under 37 C.F.R. § 1.47(a).

2. A letter dated June 12, 2001, a true and correct copy of which is attached as Exhibit A, was sent from Ronald L. Pitt, Vice President and General Manager for the Distributed Residential and Commercial Markets of Xantrex Technology Inc., to Robin Wayne Gudgel via Certified Return Receipt Mail enclosing a copy of the Combined Declaration & Power of Attorney for signature, along with a copy of the Application as filed on March 20, 2001. The June 12, 2001 letter instructed Robin Wayne Gudgel to read the enclosed documents and return to me the executed Declaration/Power of Attorney and the Assignment for the Application.

3. An e-mail message, a true and correct copy of which is attached as Exhibit B, was sent to Robin Wayne Gudgel from me on July 5, 2001, inquiring about the documents that were mailed for his signature on June 12, 2001. Robin Wayne Gudgel replied to the July 5, 2001, e-mail message on July 16, 2001, a true and correct copy of which is also included in Exhibit B. Robin Wayne Gudgel stated in his reply e-mail dated July 16, 2001 that he reviewed the Application and did not wish to be associated with the Application.

LAW OFFICES OF  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>TM</sup>  
1420 Fifth Avenue  
Suite 2800  
Seattle, Washington 98101  
206.682.8100

4. A letter dated July 7, 2001, a true and correct copy of which is attached as Exhibit C, was sent to Ronald L. Pitt from Robin Wayne Gudgel that states that he has reviewed the Application, but will not sign the Combined Declaration & Power of Attorney.

5. Robin Wayne Gudgel is no longer employed with Xantrex Technology, Inc. The last known address Xantrex has for Robin Wayne Gudgel is 14000 Burn Road, Arlington, Washington 98223.

6. As of November 2, 2001, I have not received a signed Declaration & Power of Attorney by Robin Wayne Gudgel for the Application.

7. All statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true, and further, these statements are made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment or both under § 1001 of Title 18 of the United States Code, and that such willful, false statements may jeopardize the validity of the application or any patents issuing thereon.

Dated this 2<sup>nd</sup> day of November, 2001 at Arlington, Washington.

Darlene E. McDermott

Darlene E. McDermott

JDD:teb

LAW OFFICES OF  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>LLC</sup>  
1420 Fifth Avenue  
Suite 2800  
Seattle, Washington 98101  
206.682.8100

June 12, 2001

Mr. Robin Gudgel  
14000 Burn Road  
Arlington, Washington 98223

Dear Robin:

Enclosed you will find documents regarding United States Utility Patent Application 09/812,973 entitled ENERGY CONVERSION APPARATUS. If you are in agreement after reading these documents, please sign and date both the Declaration and Power of Attorney and the Assignment (the Assignment also requires that someone witness your signature) and return everything to the attention of Darlene McDermott here in Arlington. If you choose not to sign these documents, please return everything to Darlene along with a letter explaining your reasons.

Thanks in advance for your prompt response.

Sincerely,

Xantrex Technology, Inc.



Ronald L. Pitt  
Vice President and General Manager  
Distributed Residential and Commercial Markets

RP/dm

Enclosures: (4)

By Certified Return Receipt

## Dulce Francisco

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**From:** Darlene McDermott  
**Sent:** Tuesday July 17, 2001 3:59 PM  
**To:** Bart Tichelman; Konrad Mauch; Dulce Francisco; Sunny McCormick  
**Subject:** FW: Your signature on forms

FYI to all ...

Here is Robin's response to the 2nd Patent App 29/138,710. I'll forward his letter to Dulce as soon as I receive it.

Thanks,

Darlene

-----Original Message-----

**From:** Robin Gudel [SMTP:maryrobin@msn.com]  
**Sent:** Monday, July 16, 2001 7:54 PM  
**To:** Darlene McDermott  
**Subject:** Re: Your signature on forms

Darlene,

I am mailing you a letter similar to the last one.

I'm e-mailing you because I was not given enough time to respond by mail and meet your July 17th date. I only received the package today the 16th.

This newest form is asking me to acknowledge that prior art has been researched. After reviewing the patent application, I do not feel this has been done. There are too many things claimed that in my opinion are not patentable. I do not want my name associated with this patent application.

Thank you,

Robin Gudel

----- Original Message -----

**From:** Darlene McDermott  
**Sent:** Thursday, July 05, 2001 10:54 AM  
**To:** 'Robin Gudel'  
**Cc:** Ron Pitt  
**Subject:** Your signature on forms

Robin:

Could you contact me at your earliest convenience about the forms that were sent to you for your signature on June 12th? These forms were regarding the U.S. Utility Patent Application 09/802,973 entitled ENERGY CONVERSION APPARATUS.

Also, I've been told that I have another set of forms on the way to me that will require your signature as the inventor as well. The deadline for returning these forms is July 17th.

Thanks very much,

> Darlene McDermott  
> Executive Admin Assistant  
> Distributed Residential and Commercial Markets  
> Xantrex Technology Inc.



> Email: Darlene.McDermott@xantrex.com  
> Website: www.xantrex.com  
> t: 360/435.8826 ext 2056  
> f: 360/435.6623  
>  
>

July 7, 2001

Mr. Ron Pitt  
Xantrex Technology Inc.

Ron,

I have reviewed the claims Xantrex is making in regards to the Rail Mount project. Although I do acknowledge the fact that I did design the initial version of the product, I cannot in good faith agree to the claims stated and therefore will not sign.

Most of the claims Xantrex makes are the result of just good design practice such as I have been doing for 30 years.

I feel most of these claims have been used in numerous power conversion products before and are thus unenforceable. I myself have used many of these claims in years past at other companies. Where do you think I got the ideas from?

Sincerely,

A handwritten signature in cursive script, appearing to read "Robin Gudgel".

Robin Gudgel